

CHAPTER 1: PURPOSE AND NEED FOR THE ACTION

1.1 INTRODUCTION

Under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the United States has exclusive fishery management authority over all fishery resources found within its Exclusive Economic Zone (EEZ). For purposes of the MSA, the inner boundary of the EEZ extends from the seaward boundary of each coastal state to a distance of 200 nautical miles from the baseline from which the breadth of the territorial sea is measured. The management of these fishery resources is vested in the Secretary of Commerce (Secretary) and in eight Regional Fishery Management Councils. The Western Pacific Fishery Management Council (Council) has the responsibility to prepare a fishery management plan (FMP) for any fishery requiring conservation and management in the EEZ surrounding the State of Hawai‘i, Territory of American Samoa, Territory of Guam, the Commonwealth of the Northern Mariana Islands and the U.S. Pacific remote island areas (PRIAs) of the Western Pacific Region.¹

Under the MSA, FMPs, in addition to other requirements, must contain measures necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore and promote the long-term health and stability of the fishery. These measures must be consistent with national standards set forth in the MSA, regulations implementing recommendations by international organizations in which the U.S. participates, and any other applicable law.

In 1986, the Council prepared, and the Secretary approved, a FMP for the bottomfish and seamount groundfish fisheries in the Western Pacific Region. Regulations for the fishery issued under the authority of the MSA appear at 50 CFR Part 660.

1.2 NEED FOR THE PROPOSED ACTION

The National Environmental Policy Act (NEPA) requires preparation of environmental impact statements (EISs) for major federal actions significantly impacting the quality of the human environment. Generally, when developing a new FMP for a previously unregulated fishery, an EIS is conducted on the proposed plan. However, in the case of the action implementing the Bottomfish and Seamount Groundfish FMP an environmental assessment (EA) determined that the action would have no significant impact. An EA was prepared for five of seven amendments to the FMP.² All five EAs determined that the proposed fishery management actions would not

¹The remote island areas include Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Wake Island, Palmyra Atoll, and Midway Islands. Midway is considered part of the PRIAs because it is not a part of the State of Hawai‘i.

²A NEPA environmental document was not prepared for Amendment 1 (1987) because the proposed action was considered to be a “minor adjustment” of the framework measures of the FMP. Amendment 7 is included in the Coral Reef Ecosystem FMP, for which an EIS was prepared.

have significant environmental impacts. Biological Opinions (BiOps) concerning the impacts of the bottomfish and seamount fisheries of the Western Pacific Region on the threatened and endangered species of the Northwestern Hawaiian Islands (NWHI) have been prepared by the National Marine Fisheries Service (NMFS) pursuant to Section 7 of the Endangered Species Act (ESA). The most recent BiOp was released on March 8, 2002 (Appendix H). It concludes that “the proposed action is not likely to jeopardize the continued existence of any threatened or endangered species under NMFS’ jurisdiction or destroy or adversely modify critical habitat that has been designated for them.” This BiOp anticipates take³ of endangered Hawaiian monk seals by the bottomfish fishery, but does not provide an incidental take statement pending completion of a negligible impact determination (NID) under section 101(a)(5) of the Marine Mammal Protection Act (MMPA). The BiOp will be amended if the MMPA authorization is granted. PIRO is in the process considering the issuance of an NID, as required by the MMPA. See Appendix H for the entire text of the March 8, 2002 BiOp.

The NEPA analyses for the FMP amendments focused on discrete management actions proposed over a period of several years, and no single document provides an adequate view of issues and management options for the bottomfish and seamount groundfish fisheries. One of the functions of this EIS is to address that need. The EIS presents an overall picture of the environmental effects of existing fishery activities as conducted under the FMP. It also includes a range of reasonable management alternatives and an analysis of their impacts in order to define environmental concerns and provide a clear basis for choice among options by the public, the Council and the NMFS. The analyses include assessments of the biological, economic and social impacts that result from regulation of the bottomfish and seamount groundfish fisheries, including license limitation, controls on effort, harvest levels, location, timing, and methods of fishing. Impacts on the human environment associated with status quo management (i.e., continuation of fishing as currently conducted) are presented and compared to situations simulating changes in limits on fishing areas, fishing gear and/or other measures in the management area.

There are a number of issues relating to the bottomfish fishery that require discussion in this EIS. One issue is that of interactions between fisheries and protected species. Such interactions have become some of the most contentious issues in fishery management in the United States. Species protected under the MMPA, the ESA, and the Migratory Bird Treaty Act (MBTA) may be present in areas where fisheries are conducted, and conflicts may arise between protection of

³Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in such conduct. Harm is further defined to include significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding, or sheltering. Harass is defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior. Incidental take is any take of listed animal species that results from, but is not the purpose of, carrying out an otherwise lawful activity.

such species and conduct of the fisheries. With specific regard to the bottomfish fisheries in the Western Pacific Region, the concerns are focused on fishing interactions with the endangered Hawaiian monk seal. In a court action directly related to this issue, the Earthjustice Legal Defense Fund filed a complaint on behalf of the Greenpeace Foundation, Center for Biological Diversity and Turtle Island Restoration Network alleging that the U.S. Department of Commerce and NMFS, in connection with their authorization of the bottomfish and crustacean fisheries in the NWHI, violated the ESA, NEPA, and the Administrative Procedure Act (APA) (Greenpeace Foundation, et al. v. William M. Daley, et al. (D. Haw.) Civ. No. 00-00068 (SPK) (FIY)). In March 2001, Federal Judge Samuel King denied the plaintiffs motion for a permanent injunction of the NWHI bottomfish fishery.

A second issue relates to the development of a series of Executive Orders (EO) that focused public attention on protection of U.S. coral reef ecosystems. EO 13089 of June 11, 1998 Coral Reef Protection requires agencies to (a) identify actions that may affect U.S. coral reef ecosystems, (b) utilize their programs and authorities to protect and enhance the condition of such ecosystems, and (c) ensure that any actions they authorize, fund or carry out will not degrade the conditions of coral reef ecosystems. Agencies whose actions affect U.S. coral reef ecosystems must provide for implementation of measures needed to research, monitor, manage and restore affected ecosystems, including, but not limited to, measures reducing impacts from pollution, sedimentation and fishing. The EO also established the U.S. Coral Reef Task Force composed of the heads of 11 federal agencies and the Governors of seven states, territories or commonwealths with responsibilities for coral reefs. In March 2000, the Task Force issued the National Action Plan to Conserve Coral Reefs, which presents a cohesive national strategy to implement EO 13089 of June 11, 1998.

In May 2000, President Clinton issued a memorandum urging the need to implement the Coral Reef Task Force's recommendations to ensure the comprehensive protection of the coral reef ecosystem of the Northwestern Hawaiian Islands (NWHI).⁴ The memorandum directed the Secretaries of Interior and Commerce, in cooperation with the State of Hawai'i and in consultation with the Council, to develop recommendations for a new, coordinated management regime to increase protection for the NWHI coral reef ecosystem and provide for sustainable use. Upon consideration of their recommendations and comments received during the public visioning process on this initiative, President Clinton issued EO 13178 on December 4, 2000, establishing the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, pursuant to the

⁴ The President's directive coincided with Executive Order 13158 of May 26, 2000, which requires federal agencies to establish a comprehensive national network of marine protected areas (MPAs) throughout U.S. marine waters. The executive order calls for expansion of the nation's MPA system to include examples of all types of U.S. marine ecosystems. According to the executive order, a MPA means any area of the marine environment that has been reserved by federal, state, territorial, tribal or local laws or has regulations to provide lasting protection for part or all of the natural and cultural resources therein.

National Marine Sanctuaries Amendments Act of 2000 (NMSA). The EO was revised and finalized by EO 13196, issued January 18, 2001. In establishing the Reserve, the Executive Orders set forth a number of conservation measures, including the creation of Reserve Preservation Areas in which bottomfish fishing and other types of fishing are restricted. Pursuant to EO 13178 and the NMSA, the National Oceanic and Atmospheric Administration (NOAA) is initiating the process to designate the Reserve as a National Marine Sanctuary (66 FR 5509, January 19, 2001).

In 2002, the Council prepared an FMP for Coral Reef Ecosystems (CRE FMP) that recommended a comprehensive plan for conservation of coral reef ecosystems throughout the Western Pacific Region. The FMP was approved by NMFS, except for the portion concerning the NWHI, which was disapproved due to inconsistencies with provisions of EOs 13718 and 13196. The final rule implementing the CRE FMP was published February 24, 2004 (69 FR 8336).

The NWHI have historically been important fishing grounds for the bottomfish fishery and other fisheries in the Western Pacific Region (Appendix E). Therefore, the actions to manage the coral reef ecosystem of the NWHI and provide for sustainable use of the area underscore the immediate need for a comprehensive assessment of the impacts of bottomfish fishing activity on this ecosystem.

Given these evolving issues concerning the bottomfish fishery, and that NEPA recommends taking a fresh look periodically when changes have occurred in the status of the action or the environment, NMFS and the Council prepared a Draft EIS and made it available for public review on October 17, 2003 (68 FR 59787).

1.3 SCOPE OF THIS ENVIRONMENTAL ANALYSIS

1.3.1 The Scoping Process

The Council held scoping meetings for the EIS to provide for public input into the range of actions, alternatives and impacts that the EIS should consider. Public meetings were held in Guam, the CNMI and American Samoa, as well as a series of meetings was conducted in Hawai'i on the islands of O'ahu, Maui, Hawai'i, Lāna'i, Moloka'i and Kaua'i. Meeting dates and times were published in various newspapers, and relevant meeting notices were circulated to the Council; Department of Commerce, Guam; Division of Fish and Wildlife, Department of Land and Natural Resources, CNMI; and the Department of Marine and Wildlife Resources, American Samoa.

1.3.2 Issues Addressed in this Environmental Impact Statement

The issues identified in scoping for this EIS directed that this EIS primarily focus on bottomfish fishing impacts on the Hawaiian monk seal and NWHI coral reef ecosystem. However, the environmental consequences section of the EIS (Chapter 4) also describes the impacts of bottomfish harvest accruing with present management regulations and under a range of representative alternative management regulations on other Western Pacific ecosystem issues. These issues include: (1) target species; (2) bycatch; (3) protected species; and (4) ecosystems and marine habitat other than coral reefs. In addition, the environmental consequences section examines socio-economic impacts associated with conduct of the bottomfish fisheries on the following individuals: (1) those who participate in commercially harvesting the bottomfish resources; (2) those who rely on living marine resources in the management area either for subsistence needs or for recreational benefits; (3) those who process and market the fish and fishery products; (4) those who are involved in allied support industries; (5) those who consume fishery products; (6) those who benefit from non-consumptive uses of living marine resources; (7) those who are descended from the aboriginal peoples indigenous to areas of the Western Pacific; and (8) those involved in managing and monitoring fisheries.

1.3.3 Related Ongoing Federal Actions

As previously mentioned, EO 13178 of December 4, 2000 established the NWHI Coral Reef Ecosystem Reserve. EO 13178 was revised and finalized by EO 13196 of January 18, 2001. The EOs, inter alia, provided a management regime that includes specified fishing, permit and effort caps, as well as Reserve Preservation Areas. The EOs also directed the Secretary of Commerce initiate a process to designate the Reserve as a National Marine Sanctuary. In June 2001, the Secretary of Commerce stated that “(w)hile the sanctuary designation process and review of the Executive Orders are underway, the Department will continue to use conservation and management measures under existing statutory authorities, including the Magnuson-Stevens Fishery Conservation and Management Act, to meet the Act’s requirements to manage marine resources in the Northwest Hawaiian Islands consistent with the purposes and policies of the National Marine Sanctuaries Act” (June 30, 2001 letter to Chair of WPFMC). Given the ongoing nature of the sanctuary designation process, this EIS does not address the potential outcome of that process or possible impacts of the proposed sanctuary on all components of the human environment. However, two alternatives considered by this EIS (4A and 4B, described in Chapter 2) are consistent with the concepts embodied in the establishment of the Reserve Preservation Areas in the NWHI as described in EO 13196 of January 18, 2001. A comparison of the Preservation Areas of the NWHI Reserve and the zoning alternatives proposed in this EIS is presented in Section 4.5.1. In any case, fishing allowed under the Bottomfish FMP must also be conducted in accordance with all restrictions that are applicable in the NWHI Reserve.

Section 304(A)(5) of the NMSA provides the Council the opportunity to prepare draft fishing regulations for the proposed sanctuary. If consistent with the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary, these regulations will be issued as

proposed regulations and will be part of the preferred alternative in the EIS for sanctuary designation. The status of this process is as follows. In January 2005 the Council held a series of public hearings on the range of alternatives the Council was considering. The Council took final action at its 126th meeting, and recommend that the NWHI bottomfish fishery continue to be managed under the MSA and its existing regulations modified by the pending measures described in Chapter 2. The Council also recommended a moratorium on crustaceans and precious corals harvesting in the NWHI until a archipelagic ecosystem fishery management plan is implemented. On April 14, 2005, the Council's recommendation for draft fishing regulations in the proposed sanctuary was provided to the NOAA's National Ocean Service.

1.3.4 Actions and Issues Considered But Not Addressed in this Environmental Impact Statement

As described above in 1.3.2.1, Related Ongoing Federal Actions, pursuant to EO 13178 of December 4, 2000, EO 13196 of January 18, 2001, and the NMSA, NOAA has initiated the process to designate the Reserve as a National Marine Sanctuary. As NOAA will examine the management, boundary and regulatory alternatives associated (66 FR 5509, January 19, 2001) in detail in the process of sanctuary designation, this EIS does not address the possible environmental impacts of a potential sanctuary in the NWHI.

Various management alternatives for the other island areas of the Western Pacific Region (i.e. all non-Hawaii areas) were not analyzed in this EIS because issues identified in scoping for this EIS primarily concerned the bottomfish fishery based in Hawaii, and specifically the bottomfish fishery in the NWHI. Therefore, management alternatives for the bottomfish resources and fisheries that occur in the other island areas (except for Alt. 1B which contains a Council recommended measure to include CNMI and the PRIAs in the FMP as well as a Council recommend measure for a vessel size area closure for Guam) were eliminated from detailed study in the draft EIS.

1.3.5 Major Changes Reflected in FEIS Due to Comments Received on DEIS

Chapter 6 provides a description of the all comments received as well as the agency's response to each comment. Most comments did not require changes to the EIS. However, a few comments did require that some modifications be made. The major changes are summarized below.

Alternative 1 in the DEIS represented the existing FMP as well as several pending measures which the Council has recently recommended, but yet to transmit to NMFS for approval and implementation. A comment received on the DEIS pointed out that as pending measures were included in Alt. 1, it did not reflected the true baseline, or status quo. Therefore, in the FEIS Alt. 1 was split into Alt. 1A- the true status quo (existing FMP) or No-Action, and Alt. 1B- the status quo plus several pending measures. Since the pending measures were recommended by the

Council separately, the impact analysis including a range of alternatives considered for each measure was also developed separately. For this reason, the analyses of the pending measures are included in the FEIS as appendices.

Section 1.4 was enhanced by listing the various agencies with jurisdictional authority in the Western Pacific Region and describing the various processes for coordinated management.

1.4 RELEVANT LAWS, EXECUTIVE ORDERS AND AGENCIES WITH JURISDICTIONAL AUTHORITY IN THE WESTERN PACIFIC REGION

The conservation and management of living marine resources in the U.S. is entrusted to NMFS, along with other state and Federal partners. NMFS carries out its responsibilities under many laws, treaties, and legislative mandates from the U.S. Congress and the President. The most relevant of these to the current action are briefly summarized in Appendix F.

Appendix G contains a description of marine boundaries in the Western Pacific Region. The United States claims sovereign rights to all resources within its Exclusive Economic Zone (EEZ), which is measured from the “baseline” of U.S. states, territories and possessions out to 200 nautical miles (nm). States (including territories and possessions) generally, but not always, exercise control over waters from the “baseline” out to a distance of three miles. For example, within the Western Pacific Region, the CNMI was not conveyed title to its adjacent submerged lands when the commonwealth was formed. Likewise, waters surrounding the PRIAs from the shoreline out to 200nm are under federal authority. Within “federal” waters the NMFS is responsible for management, conservation and protection of living marine resources. The Western Pacific Regional Fishery Management Council, authorized under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), prepares Fishery Management Plans to protect fishery resources within federal waters while maintaining opportunities for domestic fishing at sustainable levels of effort and yield.

In some areas, management by NMFS is under mandates other than the MSA. For example, under the authority of the Endangered Species Act, NMFS has designated 10 areas out from shore to 20 fathoms in the NWHI as critical habitat for the federally endangered Hawaiian monk seal (see section 3.3.1.3 for a description of these areas).

Within several areas of the Western Pacific Region however, and for various reasons, agencies other than NMFS claim jurisdiction over marine resources and activities, including fishing. In particular, the USFWS asserts such authority within the boundaries of National Wildlife Refuges (including submerged lands) and around the PRIAs, as the heir to areas formerly classified as Department of Defense Naval Defense Sea Areas. The varied jurisdictional claims are the subject of Appendix G. While in many cases these claims remain unresolved, users are obliged to comply with the most restrictive management measures currently in effect in each area. In

particular, fishing within a NWR is not permitted without specific permission of the USFWS.

The Executive Orders creating the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve and leading to its potential designation as a National Marine Sanctuary likewise created potentially conflicting management regimes between the National Ocean Service (NOS) and NMFS (both agencies within NOAA) with respect to control of fishing activities within Reserve waters. In this case however, the EOs established a Reserve Advisory Council (RAC) which includes members of affected agencies and interested parties, and instructed the affected agencies to work together to resolve potential conflicts. Likewise, each of the entities with management authority over some marine resources in the region, sit on the WPRFMC and participate in the Council process. In 2001, the Secretary of Commerce clarified that the fisheries of the NWHI would continue to be managed under the MSA to meet the statute's requirements to manage marine resources in the NWHI consistent with the purposes and policies of the NMSA.

In the NWHI, the State of Hawai'i owns and manages submerged lands and waters within three miles of all islands except Midway. The State of Hawai'i is currently in the process of developing a management framework for waters in the NWHI under their jurisdiction (0-3 nm).

Enforcement of fishery regulations for federal waters is done by the U.S. Coast Guard and NOAA's Office of Law Enforcement (OLE). The USCG has not enforced provisions in the Reserve or in the NWR because of the lack of codified regulations. While in some instances state and federal agencies may enter into cooperative agreements for enforcement, federal agencies generally do not enforce state regulations. NMFS and the Council have been proactive in efforts to educate fishermen about the various laws and regulations pertaining to their activities throughout the region. Education of bottomfish limited entry permit holders is accomplished through mandatory protected species workshops required of vessel operators. At these workshops, the varying management regimes in the NWHI and their prohibitions are described.

Management coordination for the agencies described above with jurisdictional authority in the Western Pacific Region is carried out through various processes such as the Fishery Management Council process and NWHI Reserve Advisory Council process. While the mandates of these respective councils vary, each of these councils meet regularly and thus, provide a mechanism for coordinated management, as well as opportunities for public participation. However, as each agency represented at a respective council, voting privileges of agencies vary among councils.